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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,746	08/19/2003	Sofia Hermansson	018798-168	3752
21839 7590 11/30/2007 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			NOTIFICATION DATE 11/30/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com
debra.hawkins@bipc.com

Office Action Summary

Application No.

10/642,746

Applicant(s)

HERMANSSON ET AL.

Examiner

Melanie J. Hand

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments, see Remarks, filed July 12, 2007, with respect to the rejection(s) of claim(s) 1-3,5-8 and 12-15 under 35 U.S.C. 102 as anticipated by Komatsu have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a different interpretation of the previously applied Komatsu reference.

Applicant's arguments with respect to the rejection of claims 1-6, 12 and 14 as unpatentable over Fisher have been fully considered and are persuasive. Therefore, the rejection of claims 1-6, 12 and 14 under 35 U.S.C. 103 as unpatentable over Fisher has been withdrawn.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 5-8, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komatsu et al. (JP 11-318985-English translation).

In regard to Claims 1-3, 5, and 7-8, Komatsu et al. disclose a disposable incontinence pad comprising an absorbent part 1 with a liquid-permeable upper layer 2, a lower backing layer 3, an absorbent body 1, and further comprising a fastening system 7/8/10 that includes a fixing tongue 7 extending only from the front end portion of the pad; the fixing tongue is an extension of the pad layers, includes a fastener 10 to be fixed to the outside of an pair of underpants, and

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can be folded around the waist of the pair of underpants (whole document). The pad 1 is fastened to the pair of underpants only by said fastening system 7/8/10.

Komatsu does not teach only one fixing tongue, either tongue 7 or tongue 8. However, since the tongues are simply extensions of the absorbent body, thus it would be obvious to one of ordinary skill in the art to modify the article of Komatsu so as to have only one fixing tongue 7 extending only from the front portion of said absorbent body 1. If there is a design need or a market pressure to solve a problem (in this case provide a liner that prevents slippage as taught by Komatsu), and there are a finite number of identified, predictable solutions (i.e. on or more fixing tongues can be present either only on the front region, only on the back region or in both front and back regions), a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation.

In regard to Claim 6, the fastener may also be fixed to the inside of the pants during use (especially see Fig.1 and [0016]-[0017].

In regard to Claim 12, the fixing tongue comprises a band of adhesive ([0016]-[0017]).

In regard to Claims 13 and 15, the pad comprises a second fixing tongue 8 comprising a second fastener 10; the fastener is arranged on the backing layer 3 (Figs., [0014]).

In regard to Claim 14, the fixing tongue 7 can be separated from the absorbent part 1 of the pad by cutting it with pair of scissors or similar device. It is further pointed out that the recitation "can be separated from the absorbent part of the incontinence pad" is considered to be functional language. It has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a prior art satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). *In re*

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Paulsen, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994). Therefore, the fixing tongue of Komatsu is fully capable of being separated from the absorbent pad.

Claims 9-11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komatsu et al.

In regard to Claim 9, Komatsu discloses an adhesive fastener covered by a protective layer (11 and 58, respectively), but do not expressly disclose that the adhesive is a pressure sensitive adhesive. However, it is known in the art to use a pressure sensitive adhesive for attachment sanitary articles to the wearer's undergarments. Thus, it would have been obvious to one of ordinary skill in the art to select a pressure sensitive adhesive, since it has been held within the skill of a worker of ordinary skill in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

In regard to Claim 10, Komatsu et al. discloses the claimed invention but do not expressly disclose that the backing layer is treated with a release agent. However, it is known in the art to treat the backing layers and release sheets of sanitary pads having adhesive so as to increase releasability. Thus, it would have been obvious to one of ordinary skill in the art to treat the backing layer with a release agent since it was known in the art to treat such layers with a release agent to increase releasability.

In regard to Claim 11, Komatsu discloses the claimed invention but does not expressly disclose that the fastener is a hook and loop fastener with a protective cover connected to the backing layer. However, it would have been obvious to one of ordinary skill in the art to provide the fastener of Komatsu as a hook and loop fastener since hook-and-loop fasteners and adhesive layers are art recognized equivalents for their use as attachment fasteners and the selection of any of these known equivalents to attach a sanitary pad to an absorbent article would be within the level of ordinary skill in the art.

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In regard to Claim 18, Komatsu discloses the claimed invention but do not expressly disclose that the rear end portion of the pad includes pre-stressed elastic material configuring at least a portion of the pad into a bowl shape. However, it would have been obvious to one of ordinary skill in the art to modify the pad of Komatsu to provide pre-stressed elastic material since it is known with in the art to provide an absorbent article with pre-stressed elastic material in order to shape the article to better fit the wearer, as supported by Widlund et al. (US 5,366,452, column 1, lines 33-46) and Runeman et al. (column 2, lines 21-29).

Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Komatsu in view of Morte et al. (US 5,291,617).

In regard to Claims 16-17, Komatsu discloses the claimed invention but does not expressly disclose that the absorbent part of the pad or the pad itself has a greatest extent in the traverse direction near the fixing tongue and a smallest extent located away from the fixing tongue. Morte et al. disclose an absorbent pad 32 for a pair of underpants having a triangular shape, with the greatest extent in the traverse direction being located nearer the waist area than a smallest extent of the pad located away from the waist area (Figures). Morte et al. disclose that positioning the a pad having a triangular shaper in this manner permits moisture to wicked upward away from the crotch and into an air exposed to more air, implicitly leading to a drier feeling for the wearer. One would have been motivated to modify the absorbent pads of either Komatsu to have a triangular shape, as taught by Moretz, since doing so would allow permit an increased sense of dryness to the wearer. Thus, it would have been obvious to one of ordinary skill in the art to modify the absorbent pads of either Komatsu to have a greatest extent in the traverse direction near the fixing tongue and a smallest extent located away from the fixing tongue since doing so would allow permit an increased sense of dryness to the wearer.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

November 22, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

